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of defending himself against the violence of a passenger, cannot be recovered in an action against the carrier. *R. R. Co. v. Sampley,* 169 Ala., 372; *O'Brien v. R. R. Co.,* 185 Mo., 263; *R. R. Co. v. Jopes,* 142 U. S., 18. As a carrier is bound to use the highest degree of practicable care to protect its passengers from assaults or insults at the hands of fellow-passengers, it would seem, *a fortiori,* that it would owe the same degree of care to protect from its own servants. See *Goddard v. R. R. C.,* 57 Me., 202, 213.

FOOD—DECEPTIVE NAME—SALE—REGULATIONS.—ST. LOUIS INDEPENDENT PACKING CO. v. HOUSTON, SEC. OF AGRICULTURE ET AL., 204 FED., 120.—Act of Congress, June 30, 1906, c. 3913, 34 Stat., 674, declares that no meat or meat product shall be sold or offered for sale by any person in interstate or foreign commerce under a false or deceptive name, and that the Secretary of Agriculture from time to time shall make such rules and regulations as are necessary for the efficient execution of the act. *Held,* that the term "sausage" being defined by lexicographers as an article of food composed of meat, salt, and spices, the Secretary of Agriculture had authority to prescribe that meat products sold under the name of "sausage" should not contain cereal in excess of 2 per cent, nor water or ice in excess of 3 per cent, and if water and cereal were in excess of such percentages, the substance should be labeled "sausage, water, and cereal."

The most difficult question the courts have had to consider under the Pure Food Law is when is an article of food misbranded or sold under a deceptive name. Courts have resorted to numerous devices to determine the question. In the principal case the court appears to have taken judicial notice of what had become the generally recognized understanding by the public of what the term "sausage" meant, and of what the public generally expected and believed it was composed. In deciding whether a certain food product sold as whiskey should be branded as "Whiskey" or "Imitation Whiskey", in addition to the chemical analysis, the court took into consideration the method of manufacturing each, the product from which each was made, and the time required for "ripening" each. *Woolner & Co. et al. v. Remmich et al.,* 170 Fed., 662; *U. S. v.* 68 *Cases of Syrup,* 172 Fed., 781. Whether two food products composed of sugar house molasses, corn syrup, and sulphur dioxide and labeled "Sugar Glen Molasses" and "Buno Molasses" respectively and each label stating of what the molasses was composed, the court based its decision on the chemical analysis of pure molasses and the article in question, and held that there was no misbranding. *U. S. v.* 779 *Cases of Molasses,* 174 Fed., 325; *U. S. v. Morgan,* 181 Fed., 587. Where an article was put on the market as "Hudson's Extract of Vanilla", not having a well known trade meaning or any other indication of what the article was composed, it was held a clear case of misbranding. *Hudson Mfg. Co. v. U. S.,* 192 Fed., 920. Where an article was sold as "London Dry Gin", and it referred to a well known kind of gin and was not intended to represent that it was a foreign product, it was held that there was no misbranding. *U. S. v.* 36 *Bottles of London Dry Gin,* 205 Fed., 111. In a very recent case the court went farther than heretofore in endeavoring to enforce the act. Green in New

York ordered of H. H. Shufeltd & Co. in Illinois five cases of champagne. The company shipped a drink composed of a low grade white wine charged with gas, and put in bottles of the same shape, size, and kind of seal and shipped them in the regular champagne cases, but nowhere on either bottles or case did the word "Champagne" appear. It was held that although the word "Champagne" did not appear, the imitation being so near like the regular champagne that a person would be readily deceived, there was a misbranding and the goods were subject to confiscation. *U. S. v.* 5 *Cases of Champagne,* 205 Fed., 817. From the foregoing decisions, the holding of the principal case is sound. Where an article of food or a food product has, by long continued use, custom, trade, become generally recognized and accepted as a standard for quality and purity, and any other article of food or food product, purporting to be the same but differing materially in quality and purity from the accepted standard, is a misbranding.

HIGHWAYS—LIABILITY FOR INJURIES—NEGLIGENCE.—NICHOLSON V. TOWN OF STILLWATER, 101 N. E. (N. Y.), 858.—In an action for damages for the death of plaintiff's intestate resulting from the capsizal of the automobile which he was driving within the defendant town, the capsizal being due to driving so near an unguarded embankment to pass a team that the automobile went over the embankment, *held,* the town was not liable unless its commissioners would have been liable for negligence because of not foreseeing the danger of such an accident as happened and guarding against it by a barrier or other appropriate means.

At common law towns were not liable for injuries caused by defective highways but have been made so by statute. *Beardsley v. City of Hartford,* 50 Conn., 529. Lack of an effective barrier where there is a dangerous embankment is a defect in the highway. *Roth v. Highways Commission,* 115 Md., 469; *Hudson v. Inhabitants of Marlborough,* 154 Mass., 218. Towns are liable for injuries caused by such defect. *Drew v. Town of Sutton,* 55 Vt., 586; *Hayden v. Attleborough,* 7 Gray (Mass.), 338. It is the duty of township supervisors to maintain a guard-rail against gulleys and declivities when they become dangerous on account of their proximity to the highway. *Cobb v. Bradford Tp.,* 81 At. (Penn.), 199. Failure to erect such a barrier is negligence, for the results of which the town is liable, *Wood v. Town of Gilboa,* 76 Hun., 175., though the commissioners may not be liable for negligence. *Glazier v. Town of Hebron,* 62 Hun., 137. The town is liable though the commissioners are not the agents of the town. *Hardy v. Keane,* 52 N. H., 370. In New York the liability of the town depends upon the negligence of the highway commissioners. *Maxim v. Town of Champion,* 4 N. Y. S., 515; *Wallace v. Town of New Albion,* 105 N. Y. S., 524. The sounder view is not in accord with the New York doctrine nor with the strict statutory liability prevalent in New England. On principle, the sounder view is, where a given *duty* is a corporate one and is absolute and not discretionary, and is one owing to the plaintiff, the corporation is liable for damages resulting to individuals by its neglect to perform its duty. Dillon, Municipal Corporations, vol. 4, sec. 1665.